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EXAMINER	
JUSKA, CHERYL ANN	
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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 09/166,625
Filing Date: October 05, 1998
Appellant(s): MAY, DAVID C.

Richard B. Lazarus
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed July 6, 2005, appealing from the Office action mailed August 25, 2004.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

Note the brief includes a section for "Grouping of Claims" which is no longer required under the new rules (see 37 CFR 41.37(c)(1)). Thus, this section is not considered in this Examiner's Answer.

(8) Evidence Relied Upon

No evidence is relied upon by the examiner in the rejection of the claims under appeal.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

A. Claims 1, 3, 7, 8, 10, 15, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 5, 266,390 issued to Garland in view of U.S. Patent 5,368,912 issued to Reaves and U.S. 5,761,853 issued to Trosper et al.

Claim 1 is drawn to a drop cloth comprising a first layer of nonwoven fabric which includes natural fibers having a thickness of 1-2 mils, and a second layer of a liquid impervious plastic material. Claim 3 limits the natural fibers to cotton fibers. Independent claim 10 is analogous to claim 1 with the exception that the nonwoven includes rayon fibers. Claims 7 and 15 limit the first layer to be fused to the second layer. Claims 8 and 16 limit the plastic material to polyethylene.

Garland discloses a drop cloth comprising (a) a first layer of a spunbonded polypropylene nonwoven (b) a second of a liquid impervious plastic film layer of polyethylene or polypropylene, (c) a third layer of a spunbonded polypropylene nonwoven, wherein the

nonwoven layers are absorbent (claim 1, col. 5, line 50-col. 6, line 17). The layers are bonded together by heat through a nip roller (col. 4, lines 36-63).

Hence, it can be seen that the Garland patent teaches the limitations of said claims with the exception of (a) the claimed thickness and (b) that the nonwoven layer contains natural or rayon fibers. With respect to the former exception, Garland teaches the thickness of the three layers is 0.0015 to 0.004 mils, with a thickness of the nonwoven layers each in the range of 0.005 to 0.002 mils (claims 2 and 4). As mentioned in the last Office Action, the examiner believes this disclosure to be in error. Specifically, even if the entire thickness of the three layer laminate is due to the fiber diameter of a singe polypropylene fiber—which it is clearly not—it would not be possible to produce a fiber small enough to make spunbond polypropylene nonwoven having said thickness. In other words, a spunbond nonwoven thickness of 0.0015-0.004 mils would require a polypropylene fiber having a denier of about $9 \times 10^{-6} - 7 \times 10^{-5}$. The examiner knows of no technology that could produce a viable fiber of this size. Additionally, Garland teaches the spunbond polypropylene nonwoven has a basis weight of 1-2 oz/yd^2 (col. 3, line 66-col. 4, line 3). For polypropylene fibers having an average density of 0.9 g/cm^3, this would produce a nonwoven of about 38 - 76 microns or 1.5 - 3 mils thick. Furthermore, other known spunbond polypropylene nonwovens having similar basis weights have a thickness greater than that disclosed by Garland. [US 5,035,941, col. 9, lines 3-8, teaches a 1.25 oz/yd^2 spunbond polypropylene nonwoven has a thickness of 13 mils, US 4,704,323, col. 7, lines 10-15, teaches a 1.6 oz/yd^2 one has a thickness of 8 mils, and US 4,441,228, col. 4, lines 42-49, teaches one having a basis weight of 2.0 oz/yd^2 and a thickness of 16 mils.] Thus, the examiner believes one skilled in the art would recognize that the thickness disclosed by Garland is incorrect. As such, it

would have been obvious to one skilled in the art to employ a thickness within the range claimed by applicant in order to produce a strong and durable, yet flexible drop cloth.

With respect to the latter exception, Garland teaches polypropylene for the nonwoven rather than the claimed natural cotton or rayon fibers. However, Garland also teaches the importance of said nonwoven being absorbent of liquids including moisture, paint thinners, wood stains and solvents..." (col. 3, lines 60-66). Garland also explicitly teaches that the outer layers (i.e., spunbond polypropylene) have to be specially formed or treated to absorb moisture-based products (col. 3, lines 29-31). Thus, it would have been obvious to one of ordinary skill in the art to substitute fibers that do not need said special treatment to be absorbent, such as inherently absorbent cellulosic fibers (i.e., cotton and rayon). The use of said inherently absorbent fibers is well known in the art of drop cloths. For example, Garland itself teaches conventional drop cloths made of cotton canvas (col. 1, lines 8-42). Additionally, Reaves teaches a drop cloth made of natural or synthetic materials, such as woven cotton sheeting or a polypropylene nonwoven (col. 2, lines 55-65). Additionally, Trosper teaches a drop cloth comprising a cotton or similar fabric and a liquid impermeable back coating is commercially known. Hence, it would have been obvious to one skilled in the art to substitute fibers that are known to be inherently absorbent fibers suitable for use in the drop cloths, as taught by Garland, Reaves, and Trosper, for the specially treated absorbent polypropylene fibers of the Garland nonwoven. It has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use. *In re Leshin*, 125 USPQ 416. Therefore, claims 1, 3, 7, 8, 10, 15, and 16 are rejected as being obvious over the cited prior art.

B. Claims 6 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over the

Garland, Reaves, and Trosper patents, as applied to claims 1 and 10 above.

Claims 6 and 14 limit the nonwoven fabric to also have synthetic fibers which are fused together. As previously discussed, it would have been obvious to one of ordinary skill in the art to substitute natural or rayon fibers for the polypropylene fibers of the Garland invention. Additionally, it would have been obvious to one of ordinary skill in the art of nonwovens to employ a blend of absorbent fibers and fusible fibers in order to produce a nonwoven web which enhances the bonding of the nonwoven to the plastic film layer of Garland. Applicant is hereby given Official Notice that it is well known in the art to employ a blend of synthetic thermoplastic fibers and cellulosic fibers to produce a strong nonwoven fabric being bonded by said thermoplastic fibers and to enhance the ability of the nonwoven to bond to other thermoplastic materials. Hence, said claims are rejected.

C. Claims 4, 5, 12, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Garland, Reaves, and Trosper patents, as applied to claims 1 and 10 above.

Claims 4 and 12 limit the fibers of the nonwoven to be oriented in a predetermined pattern, while claims 5 and 13 limit the fibers of the nonwoven to be oriented randomly. Both fiber orientations are well known in the art of nonwovens. The choice of fiber orientation is dependent upon the structure of the nonwoven itself (i.e., carded, needlepunched, spunbond, etc.) and is a matter of choice based upon strength requirements of the nonwoven, manufacture costs, and fiber type, fiber length. It has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use. *In re Leshin*, 125 USPQ 416. Hence, claims 4, 5, 12, and 13 are rejected as being obvious variants of the Garland invention.

D. Claims 9 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over the Garland, Reaves, Trosper patents, as applied to claims 1 and 10 above, and in further view of US 5,443,885 issued to Wilson and US 5,227,409 issued to Mobley et al.

Claims 9 and 17 limit the second layer to having an adhesive material disposed thereon for facilitating a temporary attachment of the drop cloth to a surface.

Garland, Reaves, and Trosper do not teach the use of an outer adhesive layer for temporary adhesive of the drop cloth to a surface. However, it is well known in the art of protective covers to include an outermost adhesive layer in order to facilitate positioning and securing of said cover. For example, Wilson teaches a self-adhesive plastic drop cloth to protect a carpet or flooring from paint, caulk, dirt and debris (col. 1, lines 14-38). Similarly, Mobley teaches a polyurethane adhesive which can be applied to a plastic or fabric drop cloth for adhering said drop cloth in place during use (col. 7, lines 51-60). Thus, it would have been obvious to one skilled in the art to employ an outermost adhesive layer to the drop cloth of the prior art of Garland, Reaves, and Trosper in order to facilitate temporary attachment of said drop cloth to a surface being protected. Therefore, claims 9 and 17 are rejected.

(10) Response to Argument

Appellant traverses the examiner's assertion that the thickness of Garland is in error by arguing that the examiner has not offered "persuasive evidence to substantiate the alleged error" (Brief, page 4,3rd paragraph under Rejection heading). Specifically, appellant does not understand how the examiner has arrived at the denier range of "about $9 \times 10^{-6} - 7 \times 10^{-7}$" (Brief, page 4,3rd paragraph under Rejection heading). [Note appellant has misquoted the upper end value as 10^{-7}. Said value should be 10^{-5}.] Appellant also asserts "The examiner's unawareness

of 'technology that could produce a viable fiber this size' is not conclusive that such technology does not exist." ((Brief, page 4,3rd paragraph under Rejection heading).

In response, the examiner asserts the denier calculation is basic textile science. However, for appellant's benefit, further explanation will now be given.

Denier is a measure of a fiber's fineness. Technically, denier is the number of grams of a single fiber per 9000 m of said fiber. Assuming a circular cross-section, the fiber diameter can be easily calculated from denier if the density of the fiber is known and vice versa:

$$\frac{(\text{Den})\,\text{g}}{9000\,\text{m}} \times \frac{\text{cm}^3}{(\text{density})\,\text{g}} \times \frac{1\,\text{m}}{100\,\text{cm}} = (\text{cross-sectional area})\text{cm}^2$$

$$(\text{cross-sectional area})\text{cm}^2 = \text{pi} \times (\text{radius})\text{cm}^2$$

$$(\text{diameter})\text{cm} = 2 \times (\text{radius})\text{cm}$$

In the above rejection, to arrive at the denier range of about $9 \times 10^{-6} - 7 \times 10^{-5}$, the examiner made the following assumptions:

(a) The total thickness of the Garland three-layer laminate was due to the diameter of a single polypropylene fiber of one of the spunbond nonwoven layers. This is clearly not the case, because the thickness of a spunbond nonwoven includes fibers overlying one another in a random orientation and the second spunbond nonwoven layer would double the thickness and the film layer would add more to the thickness. But, by making this assumption, the denier calculation remains very conservative.

(b) The polypropylene of the spunbond nonwoven has an average density 0.9 g/cm^3. This can be verified by Table A5-2, "Typical Properties of Representative Textile Fibers,"

Principles of Polymer Systems, 2nd. Ed., F. Rodriquez and Table13.1, "Properties of Olefin Fibers," Introductory Textile Science, 5th Ed., M. Joseph.

(c) The fiber cross-sectional shape is circular. Conventional polypropylene spunbond fibers have circular cross-sections. In the textile art, unless a prior art reference explicitly teaches a different profile for the cross-section, it is a reasonable assumption that said fiber is circular.

With these assumptions, from the total thickness of the three-layer drop cloth (0.0015-0.004 mils), the examiner calculated a denier of the polypropylene to be within the range of about $9 \times 10^{-6} - 7 \times 10^{-5}$.

$$(0.0015 - 0.004)\ \text{mils} \times \frac{0.001\ \text{in}}{1\ \text{mil}} \times \frac{2.54\ \text{cm}}{1\ \text{in}} = 3.81 \times 10^{-6} - 1.016 \times 10^{-5}\ \text{cm}$$

$$(\text{fiber diameter})\ \frac{3.81 \times 10^{-6} - 1.016 \times 10^{-5}\ \text{cm}}{2} = 1.905 \times 10^{-6} - 5.08 \times 10^{-6}\ \text{cm (radius)}$$

$$\pi \times [1.905 \times 10^{-6} - 5.08 \times 10^{-6}\ \text{cm}]^2 = 1.14 \times 10^{-11} - 8.10 \times 10^{-11}\ \text{cm}^2\ \text{(area)}$$

$$1.14 \times 10^{-11} - 8.10 \times 10^{-11}\ \text{cm}^2 \times \frac{100\ \text{cm}}{1\ \text{m}} \times \frac{0.9\ \text{g}}{\text{cm}^3} = 1.03 \times 10^{-9} - 7.29 \times 10^{-9}\ \text{g/m}$$

$$(1.03 \times 10^{-9} - 7.29 \times 10^{-9}\ \text{g/m}) \times 9000 = 9.27 \times 10^{-6} - 6.56 \times 10^{-5}\ \text{den}$$

Thus, if the entire thickness of the Garland drop cloth is attributed to the diameter of a single polypropylene fiber, said fiber would have a denier of about $9 \times 10^{-6} - 7 \times 10^{-5}$. This denier range is so far outside of the denier range of the smallest conventional fibers, microdenier fibers. Microdenier fibers, or microfibers, by definition, have a denier range of less than 1 denier. Additionally, the current technology of spunbond nonwoven webs limits the production of fine diameter fibers to the micron range, which is again in contrast to the Garland

teachings. The examiner believes that one skilled in the art would readily recognize that obtaining a fiber denier of the range calculated from the Garland disclosure is technologically impossible. For the sake of argument, even if it was possible to obtain such a fiber size, it would likely be cost prohibitive for use in a disposable drop cloth as disclosed by Garland.

Note the examiner could have skipped the entire denier calculation and merely converted the total thickness of the drop cloth to obtain a single fiber diameter of $3.81 \times 10^{-6} - 1.016 \times 10^{-5}$ Angstroms. One skilled in the art would again easily recognize this range as an error, since microdenier fibers have diameters in the range best measured by microns. However, the examiner chose to make the conversion to denier since fiber size is usually described in denier rather than diameter. Therefore, it is respectfully asserted that the validity of the present rejection does not rely upon the examiner's denier calculation. The examiner was merely attempting to address the error issue in terms that appellant could readily understand.

Therefore, the examiner believes more than sufficient persuasive evidence has been provided to establish that the Garland thickness values are in error and that one skilled in the art would readily understand this and still be able to make and use the invention.

Yet another way to look at the Garland error is to note the disclosed basis weight for the spunbond polypropylene nonwoven. Garland teaches said spunbond nonwoven has a basis weight of 1-2 oz/yd^2 (col. 3, lines 66-col. 4, line 3). Again presuming said polypropylene has a density of 0.9 g/cm^3, one can calculate an average thickness of said nonwoven.

$$\frac{1\text{-}2\ \text{oz}}{\text{yd}^2} = \frac{34\text{-}68\ \text{g}}{\text{m}^2}$$

$$\frac{34\text{-}68\ \text{g}}{\text{m}^2} \times \frac{\text{cm}^3}{0.9\ \text{g}} \times \frac{(1\ \text{m})^2}{(100\ \text{cm})^2} = 0.0038 - 0.0076\ \text{cm} \quad \text{OR} \quad 1.5 - 3.0\ \text{mils}$$

This is significantly different from Garland's own teaching that a single nonwoven layer has a thickness of 0.0005 – 0.002 mils (claim 3). This information further leads one to conclude that the units of Garland are in error. Again, it is noted that the current technology of spunbond nonwovens limits the fiber size to a range outside of the teachings of Garland. The examiner believes that the units should be inches rather than mils. Specifically, the nonwoven has a thickness of 0.0005 – 0.002 inches or 0.5 – 2 mils. Other units, such as metric units, would not be as likely since Garland does not employ metric units elsewhere in the disclosure. Additionally, the cited references of Blackburn, Duncan, and Marquart, show known spunbond nonwovens having similar basis weights have thicknesses that are conveniently measurable in mils rather than inches. Furthermore, it is noted that drop cloths, especially plastic film drop cloths, are commonly sold with descriptions of thickness in mils (e.g., 0.5 mil, 1 mil, 4 mil, etc.)

Appellant traverses this logic by asserting that Garland does not teach the density of the polypropylene fibers (Brief, paragraph spanning pages 4-5). Additionally, appellant argues that it is not evident why this density would result in a nonwoven of about 38-76 microns or 1.5-3 mil thick (Brief, paragraph spanning pages 4-5). Hopefully, the above discussion clarifies the matter.

Appellant also argues that the above rejection does not officially rely upon the Blackburn, Duncan, or Marquart references (Brief, page 5, 1st paragraph). In response, these three references are not the basis for the claim rejection, but rather are cited as evidence of the examiner's arguments. As such, contrary to appellant's statements (Brief, page 5, 2nd and 3rd paragraphs), said references are not relied upon to teach a thickness of 1-2 mils as presently claimed and thus, need not provide any motivation for said thickness.

Appellant asserts that there is no basis for the examiner's conclusion that it would have been obvious to one skilled in the art to employ a thickness as presently claimed (Brief, page 5, 3rd paragraph). The examiner respectfully disagrees. First, as explained in great detail above, one skilled in the art would quickly recognize that the thicknesses disclosed by Garland are in error. Secondly, one skilled in the art would readily understand the workable ranges of thickness for a drop cloth. As such, it would have been obvious to one or ordinary skill in the art at the time of the invention to select a thickness for the nonwoven layer of 1-2 mils as is presently claimed. Drop cloths must have a sufficient thickness to protect the underlying objects or flooring and to provide tear resistance, while not being too thick as to hinder the required drape properties. The effect thickness has on the utility of a drop cloth is very predictable and easily understood by one skilled in the art. Hence, one skilled in the art would be able to determine a suitable range of thickness even without any guidance from the Garland reference. Furthermore, based upon convention in the art as discussed above, one skilled in the art would likely arrive at the same conclusion as the examiner that the units of the Garland reference should be inches rather than mils. This conclusion would suggest to one skilled in the art that the Garland invention teaches a nonwoven thickness of 1.5-3 mils, which overlaps appellant's 1-2 mil thickness. Therefore, the examiner maintains the conclusion that appellant's thickness is obvious over the prior art.

Appellant traverses the rejection based upon Garland by asserting that the reference is not enabling and hence, is not proper prior art (Brief, paragraph spanning pages 5-6). Specifically, appellant notes, "In view of the statement in the final office action that Garland's disclosure is not enabling on this point, then the rejection is not proper for the additional reason that Garland

is not prior art." (Brief, paragraph spanning pages 5-6.) First, the record must be made clear. The examiner never said the Garland disclosure is not enabled. To the contrary, the Final Office Action (presumably appellant is referring to the Final dated November 4, 2003) never says that Garland is "not enabling." Rather, the action states the Garland thicknesses are believed to be in error. In fact, the subsequent Office Action (dated August, 25, 2004) asserts the Garland reference is enabled, despite the error in thickness. Specifically, it was asserted that one skilled in the art would note the error and still be able to produce the invention. *In re Epstein,* 31 USPQ2d 1817, states "If one skilled in the art would have known how to implement the features of the reference, even if an error in the disclosure is present, the reference is still enabling." In the instant case, the textile arts, in general, and the art of drop cloths, in particular, are predictable and well understood by the skilled artisan. One could readily implement the features of the reference (i.e., the three-layered drop cloth) despite the error in thickness. Therefore, the examiner contends the Garland reference is properly available as prior art.

The second issue with respect to the standing rejection is the obviousness of substituting natural (i.e., cotton) or rayon fibers for the polypropylene fibers of Garland (Brief, page 6, 1st paragraph). Appellant traverses on the grounds that it would not have been obvious to bond a nonwoven of natural or rayon fibers to a polymer film (Brief, paragraph spanning pages 6-7). This argument is unpersuasive since one skilled in the art readily understands how to laminate a polymeric film to a fabric, including fabrics of natural or rayon fibers. [Note the Trosper reference.] The lamination occurs by the melting of the polymer film so that it flows to encapsulate the surface fibers of the nonwoven. Additionally, as argued in the rejection of claims 6 and 14, it would have been obvious to employ blend synthetic polymeric fibers with the

natural or rayon fibers in order to increase the bond between the film and fabric layers. Blends of synthetic and cellulosic fibers are well known in the textile arts. Specifically, it would have been readily obvious to one skilled in the art to substitute the spunbond polypropylene nonwoven of Garland with a nonwoven comprising polypropylene and cellulosic fibers. The addition of cellulosic fibers (i.e., cotton and rayon) would reduce the need to specially treat Garland's polypropylene fibers for absorbency since said cellulosic fibers are inherently absorbent. Additionally, by substituting only some of the fibers (i.e., creating a blend), the polypropylene fibers aid in the fusion bonding of the layers.

Appellant argues that Garland in combination with the Reaves and Trosper references does not suggest the claimed invention comprising natural or rayon fibers (Brief, page 7, 1st paragraph). However, it is reiterated that Garland teaches the importance of the nonwoven layers being absorbent, but requires the polypropylene nonwovens to be specially treated to achieve said absorbency. Reaves is relied upon to teach natural cotton fibers are well known in the art of drop cloths, while Trosper is relied upon for its teaching that cotton fabrics having a liquid impermeable back coating are commercially known. Hence, it would have been obvious to one skilled in the art to substitute some, if not all, of the specially treated polypropylene fibers of Garland with cotton or rayon fibers, which are known to useful in drop cloths and are inherently absorbent.

Regarding the rejection of claim 3, which limits the natural fibers to cotton fibers, appellant questions "What is the effect on stiffness, toughness and tear resistance when a more absorbent material is used in place of the material taught by Garland?" (Brief, page 8, 2nd paragraph). Appellant also states "The explanation in the office action is not proper without

evidence of the conclusions of one of ordinary skill in the art regarding the effect of the change on each of the important characteristics of the drop cloth." (Brief, page 8, last paragraph.) In response, it is first noted that the examiner respectfully disagrees with this statement. Secondly, the references clearly teach cotton is suitable for use in drop cloths. As such, it is presumed that cotton fabrics have properties suited for the utility, such as stiffness, toughness, and tear resistance. While Garland teaches theses characteristics are important to said utility, the reference does not specify any required standards. Once again, it is asserted that the art of drop cloths is not especially high tech or unpredictable. Rather, one skilled in the textile arts readily understands the relations of stiffness, toughness, and tear resistance with respect to fabric thickness, fiber type, etc. Thus, appellant's argument is found unpersuasive.

Regarding the rejection of claims 4, 5, 12, and 13, appellant asserts the references do not teach or suggest fiber orientation for the nonwoven fabric (Brief, page 9, 1st and 2nd paragraphs, paragraph spanning pages 11-12, and page 12, 1st paragraph). In response, it is asserted that the orientation of a nonwoven fabric is largely dependent upon the method of making said nonwoven. For example, conventional spunbond fabrics are randomly oriented, while common nonwovens made of staple fibers (i.e., cotton) typically show some orientation (e.g., carded nonwoven web). Since the Garland reference does not require one orientation over another, it is reasonable to presume that the orientation of the fibers are not critical to the invention. Hence, Garland actually supports both fiber orientations. Additionally, one skilled in the art readily understands fiber orientation with respect to a nonwoven structure and its method of manufacture.

Appellant traverses the rejection of claims 6 and 14 by asserting that the examiner's use of Official Notice "at this point in the prosecution" is improper (Brief, page 10, 2nd paragraph and page 13, 1st paragraph). The examiner respectfully disagrees. Specifically, the examiner is unaware of any requirement that prohibits such notice. While it may be preferable to cited Official Notice earlier in prosecution, there is nothing prohibiting its use later in prosecution. Additionally, according to MPEP 2144.03, it is asserted that appellant has not properly traversed the examiner's Official Notice. Specifically, appellant's burden to challenge Official Notice must specifically point out the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art.

Regarding claims 7 and 15, appellant asserts Garland's teaching of fusion bonding the three layers together is not the same thing as fusing the claimed nonwoven having natural or rayon fibers to a liquid impervious plastic film (Brief, page 11, 1st paragraph and paragraph spanning pages 13-14). In response, it is reiterated that one skilled in the art readily understands how to laminate a polymeric film to a fabric, including fabrics of natural or rayon fibers. Additionally, by substituting only some of Garland's polypropylene fibers with cotton or rayon fibers (i.e., creating a blend), one skilled in the art understands that the polypropylene fibers aid in the fusion bonding of the layers.

Appellant traverses the rejections of claims 8 and 16 by merely noting that Garland's teaching to a polyethylene film layer is not the same as the presently claimed combination with a 1-2 mil nonwoven fabric of cotton or rayon fibers and a polyethylene film (Brief, page 11, 2nd paragraph and page 14, 1st paragraph). In response, the examiner relies on the arguments presented above as to the obviousness of the rejection.

Lastly, regarding the rejection of claims 9 and 17 over the combined art of Garland, Reaves, and Trosper and in further view of Wilson and Mobley, appellant asserts that claims 9 and 17 stand or fall with claims 1 and 10 (Brief, page 14, 2nd paragraph).

In summary, the examiner contends that the Garland invention is enabled, despite the error in recited thickness, since one of ordinary skill in the art would readily recognize the error and still be able to make and use the invention since the art of textiles, in general, and drop cloths, in particular, are relatively uncomplicated and predictable. Additionally, it would have been readily obvious to one skilled in the art to substitute some, if not all, of the polypropylene fibers, which require treatment to render them absorbent, with inherently absorbent fibers such as cotton or rayon. Therefore, the examiner believes the above rejections should be maintained.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

CHERYL A. JUSKA
PRIMARY EXAMINER

Cheryl Juska

Conferees:
Terrel Morris - TM DLT for CC
Carol Chaney